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|---------------------------------------|---|--------------------|
| SNOW L. HAVLIK |) | |
| Claimant |) | |
| VS. |) | |
| |) | Docket No. 245,968 |
| CHALET RESTAURANT & SPORTS |) | |
| Respondent |) | |
| AND |) | |
| |) | |
| WORKERS COMPENSATION FUND |) | |

In her brief to the Appeals Board, claimant concedes that the Fund did not receive timely notice of the preliminary hearing and, therefore, “is entitled to a reversal of Judge Barnes’ Order.” But claimant argues that any new hearing should be limited to the sole issue of whether the respondent is insolvent. Claimant contends the Fund cannot raise the issues of whether claimant sustained a compensable work-related accident and whether claimant is temporarily and totally disabled.

The only issues before the Board on this appeal are:

1. Is the August 24, 1999 preliminary hearing Order binding upon the Workers Compensation Fund?
2. If the Order is not binding upon the Fund and the parties have a rehearing, may the Fund raise the issues of (1) did the alleged accidental injury arise out of and in the course of employment and (2) is claimant entitled to receive temporary total disability benefits?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Appeals Board finds:

1. The Workers Compensation Fund alleges, and Ms. Havlik concedes, that the Workers Compensation Fund did not receive timely notice of the preliminary hearing that was held on August 24, 1999. Ms. Havlik also concedes that the Fund is not bound by the August 24, 1999 preliminary hearing Order requiring it to pay medical and temporary total disability benefits. It is unnecessary to set forth the facts supporting those conclusions.
2. The respondent, Chalet Restaurant & Sports, alleges that it did not have workers compensation insurance for the period of accident alleged in this claim. It also contends that it does not have the ability to pay workers compensation benefits to Ms. Havlik should they be awarded.
3. The Workers Compensation Act provides that the Workers Compensation Fund is to pay benefits to injured workers when their employer has no insurance and is financially unable to pay benefits.¹
4. Kansas Administrative Regulation provides that the Workers Compensation Fund is entitled to a hearing when it may be required to pay benefits due to the employer's absence or inability to pay. The pertinent regulation provides:

(c) The workers' compensation fund shall be entitled to a hearing on the question of its liability imposed by the provisions of K.S.A. 44-532a. The administrative law judge may award compensation pursuant to K.S.A. 44-532a against the workers' compensation fund following a preliminary hearing if the fund was properly impleaded and given the statutory notice of the hearing.²

¹ K.S.A. 44-532a.

² K.A.R. 51-15-2.

5. The August 24, 1999 Order is not binding upon the Workers Compensation Fund because it did not receive timely notice of the hearing.

6. By regulation the Fund is given the right to a hearing when it may be responsible to pay benefits due to an employer's inability to pay. The regulation does not limit that right only to certain issues. Further, preliminary hearing findings are not binding and may be modified at a later preliminary hearing as the facts develop. Therefore, the Board concludes that the Judge may address any issues of compensability raised by the parties should there be a rehearing.

WHEREFORE, the Appeals Board vacates the August 24, 1999 preliminary hearing Order as to the Workers Compensation Fund.

IT IS SO ORDERED.

Dated this ____ day of October 1999.

BOARD MEMBER

c: Chris A. Clements, Wichita, KS
Edward D. Heath Jr., Wichita, KS
Christopher J. McCurdy, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director